1138.

SUPREME COURT OF THE UNITED STATES.

No. 174.

THE STEAMBOAT BULLETIN, HER TACKLE, APPAREL, AND FURNITURE—CHARLES B. CHURCH, CLAIMANT—APPELLANT.

vs.

WILLIAM W. TUNSTALL, LIBELLANT.

IN ERROR TO THE CIRCUIT COURT U. S. FOR THE DISTRICT OF LOUISIANA.

INDEX.

	Original.	Print.
Libel	2	3
Judge's order on said libel	6	6
Writ of seizure	6	6
Marshal's return on said writ	7	6
Citation	7	7
Marshal's return on said citation	8	7
Claim	8	7
Bond	9	8
Answer	10	9
Testimony of F. C. Fulcher	12	10
Testimony of Thomas L. Bailey	14	11
Testimony of John Duncan	17	13
Testimony of William McBride	19	14
Testimony of John M. Scott	19	14
Testimony of William Elfert	21	15
Testimony of F. C. Fulcher	22	16
Bill of lading	22	16
Testimony of A. G. Butler	23	16
Testimony of James P. Magning	25	17
Testimony of Daniel Hall	27	19
Testimony of Louis A. Drouillard	28	19
Testimony of William McGee	31	21
Testimony of Brertan Robinson	32	22
Testimony of Anson W. Church	32	22
Testimony of David Hukill	33	23
Testimony of John S. Smyth	36	24
Testimony of H. L. Church	38	25

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	Original.	Print.
Testimony of John Kercheval	41	28
Certificate from Inspector of Vessels	44	30
Enrolment	45	30
Instrument of protest	47	31
Entry on minutes of the 22d April, 1847	51	33
Entry on minutes of the 23d April, 1847	51	34
Judgment of the district court	51	34
Petition of appeal	52	34
Appeal bond	53	35
Citation of appeal	54	35
Marshal's return on said citation	54	36
Clerk's certificate of the district court	55	36
Judge's certificate	55	36
Entry on the minutes of the 6th January, 1848	55	36
Testimony of Andrew J. Bell	56	37
Testimony of Capt. Dean	57	37
Testimony of Burdett Paris	57	38
Testimony of J. M. Petit	59	39
Testimony of Robert Smith	59	39
Testimony of Capt. Isaiah Sellers	60	40
Testimony of J. O. Pierson	62	41
Testimony of Capt. Robertson	63	42
Agreement of counsel	65	43
Entry on the minutes 7th January, 1848	66	43
Judgment of the circuit court	66	43
Final decree	66	44
Petition of appeal	67	44
Appeal bond	67	44
Order on the minutes 25th February, 1848, granting appeal	68	45
Agreement of counsel	69	45
Certificates of clerk and judge	70	45

United States circuit court, fifth circuit, and district of Louisiana.

STEAMBOAT BULLETIN
vs. } 1653.
W. W. TUNSTALL.

On appeal from district court.

Pleas and proceedings before the honorable John McKinley, presiding judge of the United States circuit court, fifth circuit and district of Louisiana, at a circuit court of the United States, in and for the fifth circuit and district aforesaid, begun and held at the city of New Orleans, in the district aforesaid, on the second day of February, in the year of our Lord one thousand eight hundred and forty-eight.

Be it remembered, that heretofore, to wit, on the twenty-second day of December, in the year of our Lord one thousand eight hundred and forty-seven, came the appellant, Charles B. Church, by his proctors, Benjamin & Micon, esqs., into the clerk's office of the said court, and filed a complete and correct transcript of a certain cause, before that time decided in the district court of the United States for the district of Louisiana, wherein W. W. Tunstall was libellant, and the Steamboat Bulletin, her tackle, apparel, and furniture, was libelled; which said transcript is in the words and figures following, to wit:

United States district court for the district of Louisiana.

Be it remembered, that on the fourteenth day of April, in the year of our Lord one thousand eight hundred and forty-six, William W. Tunstall, by his proctors, Lacy and Hunton, came into the said court and filed a libel, in the words and figures following, to wit:

UNITED STATES OF AMERICA,
Eastern district of Louisiana:

Libel.

To the honorable Theodore H. McCaleb, judge of the district court of the United States for the eastern district of Louisiana.

The libel and complaint of William W. Tunstall, residing in the State of Arkansas, late owner of the steamboat Wabash Valley, (whereof he was lately master,) her tackle, apparel, and furniture, against the steamboat Bulletin, (whereof Charles B. Church now is, or lately was, master,) her tackle, apparel, and furniture, and against Charles B. Church, master and part owner thereof, and also against all persons lawfully intervening for their interest in said steamboat, in a cause of collision, civil and maritime. And thereupon the said William W. Tunstall alleges and articulately propounds as follows:

First. That on the 20th day of March, 1846, the said steamboat Wabash Valley, whereof the said William W. Tunstall then was mas-

ter, was at the port of Batesville, Arkansas, on White river, destined on a voyage from thence to the port of New Orleans, with a cargo of merchandise on board of great value, and with passengers, and was then stout, staunch, and strong, was well manned and appointed with officers and crew, and was in every respect fit for the voyage she was about to undertake.

Second. That on the said 20th day of March, the said steamboat, provided and equipped as aforesaid, departed from Batesville on her aforesaid voyage to the port of New Orleans, Louisiana, and in prosecution thereof had descended the Mississippi river to a point about one mile below Jeffersonville College, and about sixty miles above the port of New Orleans, on or about the night of the 27th day of March, 1846, and about half an hour past midnight of the said day, that is, on the morning of the 28th day of March aforesaid, within the ebb and flow of the tide, and within the maritime and admiralty jurisdiction of this honorable court, Thomas L. Benley, the pilot of the Wabash Valley, who was then at the wheel, first discovered a steamboat, (since ascertained to have been the steamboat Bulletin,) whereof the said Church was then master, distant about two miles, running up the Mississippi river; at which time the said Wabash Valley was in her proper position, running in the regular channel taken by steamers descending the Mississippi, being about the middle of the river on what is commonly called the "Bend Side;" the said steamer Bulletin was observed to be out of her proper position as she approached towards the Wabash Valley, and was hailed by the said pilot and the mate of the Wabash Valley, and the persons in command of the said Bulletin were, in a loud and audible manner, requested to stop their boat, (which was propelled by steam) and not to run into the said Wabash Valley, which they might with great ease have done, but which they neglected to do; the engines of the said Wabash Valley having been stopped instantly upon the approach of the said steamboat Bulletin, and the bell thereof rung to back her; and that notwithstanding the said steamboat Wabash Valley was then in her proper position for a descending boat, and that notwithstanding the said steamboat Bulletin might, with great safety and propriety, have kept clear of the said Wabash Valley, the officers and crew thereof continued on their course without stopping, and immediately ran into and foul of the said Wabash Valley, striking her with great force and violence on the larboard side, near the chock, cutting her bow completely off, when the said Wabash Valley sunk to her cabin floor in less than three minutes after, the crew and passengers barely saving their lives; that the officers of the said Wabash Valley, immediately upon the collision, made signals of distress, by constantly ringing their bell, for the said Bulletin to remain and render assistance; but she proceeded on without making any stop; that the hull of the Wabash Valley parted from the cabin, the boat becoming a complete wreck; that signals of distress were continued, when, shortly after, Captain Scott, of the steamer Belle Creole, descending the river, came

along side, taking the passengers and crew, and afterwards towed the wreck to the bank of the river.

Third. That the said collision was occasioned by the carelessness, want of skill, or recklessness of the said Church, the officers and crew of the said Bulletin; that the said Wabash Valley was in her proper position, and was properly managed, at the time of said collision, and without fault; and that said steamboat Bulletin was not in proper position, and was not properly managed, and the master and crew might easily, with proper care, prudence, and skill, have avoided and kept clear of the said Wabash Valley.

Fourth. That the said steamboat Wabash Valley, before and at the time of receiving the damage from the said steamboat Bulletin as herein before mentioned, was a tight, staunch, and strong boat, and that the libellant was the true and lawful owner of the same, and of her tackle, apparel, and furniture.

Fifth. That, in consequence of the said collision, the said boat Wabash Valley was and became a total loss to libellant, and was of the value of five thousand dollars; that the freight upon the said cargo, which was lost, would have amounted to fifteen hundred dollars, which also was lost to libellant; and that libellant had on board said boat Wabash Valley, at the time of said collision, *of* lot of cattle of the value of one hundred and fifty dollars, which were at the same time lost in consequence of said collision; and that, by reason of the said Wabash Valley having been run foul of as aforesaid, the libellant has sustained damages as aforesaid to the amount of six thousand seven hundred and fifty dollars.

Sixth. That the said Charles B. Church resides out of the State of Louisiana, in the State of Tennessee, but is now in the city of New Orleans; and that the said steamboat Bulletin is now in the port of New Orleans, and within the jurisdiction of this honorable court.

Seventh. That all and singular the premises are true and within the admiralty and maritime jurisdiction of this honorable court; that the said place of collision is within the ebb and flow of the tide; in verification whereof, if denied, the libellant craves leave to refer to the depositions and other proofs to be by him exhibited in this cause.

Wherefore, the said libellant prays that process, in due form of law, according to the course of courts of admiralty, and of this honorable court in causes of admiralty and maritime jurisdiction, may issue against the said steamboat Bulletin, her engine, apparel, and furniture, and against the said Charles B. Church, part owner of the said boat, and against all other persons lawfully intervening, for their interest in said steamboat; and that said Charles B. Church, and all other persons having, or pretending to have, any right, title, or interest therein, may be cited to appear and answer, upon oath, all and singular the matters so articulately propounded; and that this honorable court would be pleased to pronounce for the damages aforesaid, to be paid by privilege out of the proceeds of sale of said boat, and to decree such other relief as law and justice may require; that the said steamboat

Bulletin be seized and condemned to be sold, and that the said Church, and all other persons intervening, be condemned to pay said damages and *in* costs.

(Signed) W. W. TUNSTALL.
(Signed) LACY & HUNTON, *Proctors.*

W. W. Tunstall, the above named libellant, being sworn, states, that the facts and allegations set forth in the foregoing libel are true.
(Signed) W. W. TUNSTALL.

Sworn to and subscribed before me, this 14th day of April, 1846.
(Signed) N. R. JENNINGS, *Clerk.*

Judge's order on said libel.

Let process issue against the steamboat Bulletin in rem., and against her tackle, apparel, and furniture, and in personam against Charles B. Church, owner of said boat, citing him to appear and answer this libel.
(Signed) THEO. H. McCALEB, *U. S. Judge.*

And on the fourteenth day of April, in the year of our Lord eighteen hundred and forty-six, the following writ of seizure was issued from the clerk's office, to wit:

Admiralty warrant.

The President of the United States of America, to the marshal of the district of Louisiana, or to his lawful deputy, greeting:

You are hereby commanded forthwith to seize, and into your possession take, the steamboat Bulletin, her tackle, apparel, and furniture, now libelled by William W. Tunstall in the district court of the United States for the district of Louisiana; that you do cite and admonish the owner or owners, and all and every other person or persons having, or pretending to have, any right, title, in or to the same, to be and appear before a district court of the United States, for the district aforesaid, to be holden at the city of New Orleans, on or before the third Monday from the service hereof, to show cause, if any they have or can, why the said steamboat Bulletin, her tackle, apparel, and furniture, should not be condemned and sold agreeably to the prayer of the libellant; and how you shall execute this warrant, that you make return according to law.

Witness the honorable Theo. H. McCaleb, judge of the said court, this fourteenth day of April, 1846, and the 70th year of the [L. S.] independence of the United States.

N. R. JENNINGS, *Clerk.*
(Signed) By L. E. SIMANDS,
Deputy Clerk.

Marshal's return on warrant.

Received April 14th, 1846; on the same day seized and took into my possession the steamboat Bulletin, her tackle, apparel, and furniture;

published monition and gave notice as within commanded, and on the 15th of the same month released her by virtue of the annexed authority. (Signed)

WM. F. WAGNER,
U. S. Marshal.

And on the 14th day of April, 1846, the following citation was issued from the clerk's office, to wit:

United States district court, sitting in and for the district of Louisiana, to Charles B. Church, now in New Orleans:

You are hereby summoned to comply with the prayer of the annexed petition, or file your answer thereto in writing, in the office of the clerk of the district court of the United States, for the district of Louisiana, in the city of New Orleans, ten days from service hereof, or judgment will be given against you by default.

Witness the honorable Theodore H. McCaleb, at the city of New Orleans, this fourteenth day of April, 1846, and 70th year of the independence of the United States. [L. S.]

(Signed) N. R. JENNINGS, *Clerk.*
By L. E. SIMANDS,
Deputy Clerk.

Marshal's return on citation.

Received April 15th, 1846, and on the same day served a copy of the within citation and petition in admiralty, and documents annexed, on Captain Charles B. Church, of the steamer Bulletin, in person, in the city of New Orleans.

For WM. F. WAGNER,
U. S. Marshal.
J. H. RINEHART,
Deputy U. S. Marshal.

And on the 15th day of April, A. D. 1846, the following claim was filed in the clerk's office, to wit:

To the honorable the district court of the United States, for the district of Louisiana:

W. W. TUNSTALL
vs.
STEAMBOAT BULLETIN and master.

And now comes into this honorable court Charles B. Church, who declares that he is master and owner of the steamboat Bulletin, now under seizure at the suit of the said W. W. Tunstall, and prays that the said steamboat Bulletin, her tackle, &c., be released from said seizure and delivered to him, upon giving bond conditioned according to law.

(Signed) CHAS. B. CHURCH.

Sworn to and subscribed before me, this 15th April, 1846.

(Signed) N. R. JENNINGS, *Clerk.*

And on the 15th day of April, A. D. 1846, the following bond was filed in the clerk's office, to wit:

UNITED STATES OF AMERICA,
Eastern district of Louisiana.

Know all men by these presents, that we, Charles B. Church, as principal, and Maltby & Goodrich, J. M. Relf & Co., Edgell, Mulford & Co., Hyde & Oglesby, and Fellows, Johnson & Co., as securities, are held and firmly bound unto W. W. Tunstall in the sum of nine thousand dollars, lawful money of the United States; for the payment whereof to the said W. W. Tunstall, his heirs, executors, administrators, or assigns, we jointly and severally bind ourselves, our heirs, executors, and administrators, firmly by these presents.

Witness our respective names and seals, hereunto affixed by us at New Orleans, this fifteenth day of April, one thousand eight hundred and forty-six.

Whereas an admiralty warrant was lately issued out of the honorable the district court of the United States, for the eastern district of Louisiana, at the suit of William W. Tunstall vs. the Steamboat Bulletin and Charles B. Church, and numbered 6284 on the docket of the said court, commanding the marshal to seize and take into his possession the steamboat Bulletin, which has been seized accordingly, but has been released from said seizure and delivered to Charles B. Church, the said Charles B. Church, at the time, and by reason of the signing, sealing, and delivery of these presents; and the said Charles B. Church filed a claim to the said steamboat Bulletin in the clerk's office of the said court, and which claim is now of record.

Now, the condition of the above obligation is such, that if judgment shall pass in favor of the libellant against the said claimant, and the said claimant shall forthwith pay into the said district court, or to the proper officers thereof, the full amount of said judgment, together with all the costs of said suit, then the foregoing obligation is to be void, but otherwise shall remain in full force and virtue.

CHARLES B. CHURCH, [L. S.]
MALTBY & GOODRICH, [L. S.]
By L. MALTBY.
J. M. RELF, & CO., [L. S.]
By J. M. RELF.
EDGELL, MULFORD & CO., [L. S.]
By J. ELEDLDWELL.
HYDE & OGLESBY, [L. S.]
By JNO. E. HYDE.
FELLOWS, JOHNSON & CO., [L. S.]
By FELLOWS.

Bond taken according to the rules of court.
Signed, N. R. JENNINGS, *Commissioner*.

And erasures as above made before signing.

And afterwards, on the 23d day of June, A. D. 1846, Charles B. Church, by his proctors, Benjamin and Micon, esq'rs., came into the said court, and filed the following answer, to wit:

To the honorable the judge of the district court of the United States, for the district of Louisiana.

And now, C. B. Church, the master and part owner of the steamboat Bulletin, and the agent of the remaining owners, appears, and for answer to the libel of W. W. Tunstall against said boat and owners, doth allege and articulately propound:

First. That on the night of the 27th March last past, the said steamboat Bulletin, well manned and equipped, and with competent and skilful officers and crew, was ascending the river Mississippi, in the vicinity of Jefferson College, when she was suddenly run into by the steamboat Wabash Valley, the bows of the latter striking the guards of the Bulletin about ten feet forward of the side-house.

Second. That said collision did not occur through any fault, negligence, or want of skill on the part of the said steamboat Bulletin, or of her officers and crew; that the said Bulletin was then and there in her proper position, and that every effort was made on the part of the said officers and crew to avoid the said collision.

Third. That said collision was caused only by the negligence, want of skill, and carelessness of the officers and crew of the said Wabash Valley, or by the insufficiency and unseaworthiness of said boat; that said Wabash Valley was not in her proper place or position, and that the said officers and crew did not make proper or reasonable efforts to avoid said collision, which she might have avoided if she had been properly and skilfully managed.

Fourth. That touching the alleged loss and damage done to the said boat, the Wabash Valley, the said damage, if any, was not discovered or known at the time of the collision to the officers or crew of said Bulletin, nor did they *leave* any material damage had been done until many days afterwards.

Fifth. That, with the exception of so much of said libel as is hereinbefore admitted to be true, all the remaining charges and allegations therein contained are false and untrue, that the claims and pretensions of said libellant are unfounded, and that he did not sustain damage as by him alleged.

Wherefore this respondent, on his own behalf and in behalf of his joint owners whom he represents, prays that this court will pronounce against said libel, and condemn the libellant to costs, and otherwise right and justice administer in the premises.

Signed, BENJAMIN AND MICON,
Proctors.

And afterwards, on the 22d day of April, A. D. 1847, the following testimony was offered in evidence by libellant, to wit:

WILLIAM W. TUNSTALL } In U. S. district court.
vs.
CHARLES B. CHURCH. }

Testimony taken by consent on part of libellant.

F. C. Fulcher being sworn states, that he resides out of this State, and expects to leave the city in a few days; was clerk on board the Wabash Valley at the time of collision with the Bulletin; on the night of the 27th March, he had retired to his berth, and was roused by the shock attending the collision, between 12 and 1 o'clock at night; sprang up, went out on the guards, discovered a boat a short distance from the Wabash Valley going up; did not then know what boat it was. When witness first saw the ascending boat, she was distant not more than 200 yards. The bell of the Wabash Valley was rung immediately for relief. She was sinking, and in two minutes the hull was under water, the cabin parted from the hull. The steamboat Belle Creole, Captain Scott, came in a few minutes to our aid, rescuing some of the passengers and crew from the river, and some from the wreck; then towed the wreck ashore. The boat, her tackle, apparel, and furniture belonged to W. W. Tunstall, and was a total loss, except a little cabin furniture of small value; at [the] time of the collision witness thinks the boats were near about the middle of the river, rather nearest the "Bend Shore."

The signal light in front was up, and witness recollects was the last light that remained on the boat, the lamps having been broken and knocked out in the confusion attending the loss. Deponent supposes the Wabash Valley was worth five thousand dollars. Captain Tunstall was offered for one-half of her, on the trip down, twenty-four hundred dollars, and refused it. The Wabash Valley was heavily laden; her cargo consisted of cotton, corn, bacon, lard, peltries, and live stock. Supposes there were in all some twenty passengers aboard. Deponent says the freight upon the cargo would have amounted to about fifteen hundred dollars, besides the amount due for passengers; part of the passengers had paid. Supposes the balance due from them would amount to about one hundred dollars. Captain Tunstall himself had some stock on board the boat at the time of the loss, and some peltries; he had, witness thinks, five head of beef cattle, worth fifteen or twenty dollars per head. He had 52 pairs venison hams, worth about one dollar per pair; don't know what his peltries were worth.

Cross examined.

Witness was asleep at time of collision. The Wabash Valley and Bulletin were about two hundred yards apart when witness first saw the Bulletin. Can't state whether the Wabash Valley, after her collision with the Bulletin, drifted nearer the shore or farther from it. When the Belle Creole took hold of the wreck of the Wabash Valley to tow her ashore, the wreck was near the middle of the river, but somewhat nearer the Bend shore than the other. No bell was heard by witness

on Wabash Valley till after the shock. The bell was rung but a short time after he got on deck; immediately after. The hull of the Wabash Valley was not towed ashore. The cabin broke loose, and the hull sunk, and it was the cabin that was towed ashore. The passengers that were taken out of the river were on cotton bales, and were taken up by the yawl of the Belle Creole, and some by yawl of Wabash Valley. Witness can't say how far the Bulletin was from the shore when he first saw her. She was about two hundred yards above the Wabash. Witness heard a man offer twenty-five hundred dollers to Capt. Tunstall for half of Wabash Valley; it was a young man from Holy Springs, Miss. Witness don't remember his name. He offered $1,500 cash, and $1,000 on time, and Tunstall wanted all cash. It was a light starlight night. Witness could see the light on the shore, and the shore itself, from the Wabash Valley. Witness now says he thinks the name of the young man was Runnels.

(Signed,) F. C. FULCHER.

Sworn and subscribed before me this 21st April, 1846.

(Signed) ALEX. WALKER,

Associate judge city court, New Orleans, La.

Thomas L. Benley, being duly sworn, states, that he resides in Arkansas. He expects shortly to leave the city. He was the pilot on the Wabash Valley, and at the wheel on the night of the 27th March, 1846, at the time of the collision with the steamboat Bulletin. The collision occurred about 1 o'clock at night, on the Mississippi river, about one mile below Jeffersonville college, about 60 miles above the city of New Orleans. It was a clear, starlight night; no fog. The Wabash Valley was descending the river, and the Bulletin ascending. He thinks, when he first saw the Bulletin, she was about one and a half miles distant. He observed her movements, and at one time thought she was about to make her crossing near the usual place, but, as she approached, witness discovered she was bearing out of her course towards the Bend, not dreaming, however, that she would continue her course to the Bend shore, on account of the direction she seemed to be taking. Witness went with his boat rather nearer the Bend shore than he would otherwise have done, for the purpose of avoiding any possibility of a collision. As she approached the Wabash Valley, and when within about seventy yards from us, finding that the Bulletin was still bearing to the Bend shore, witness had the engines of the Wabash Valley stopped. The Bulletin came on under full headway, and as she got close to the Wabash Valley secured to swing off to avoid a collision, but was too late. The Wabash Valley was not under headway at the time of the collision, except from the force of the current. Both the engine bells had been rung before the collision to back her, and one of the engines had made several revolutions backwards. The Bulletin approached as swinging towards the bend shore, and struck us first very slightly with her bow. She then flanked up, striking the Wabash Valley with her side bows, and witness thinks the wheel of the Bulletin passed entirely

over the bow of the Wabash Valley. About the time witness first rung the bell to stop her, he told the mate to *hollow*, and tell those in command of the Bulletin to stop her or cross over, that we could not get out of her way. He did so. Nothing in reply was said on board the Bulletin; the boats were then within 50 or 60 yards of each other, and near enough to have heard our hail. The signal lights on the Wabash Valley *was* up, and *was* burning still after she sunk down.

The chart exhibited to witness marked A, and signed by "L. Hunton and Micon," is an accurate representation of the river and the position of the boats at the time of collision, except that the bend is not sufficiently crooked, there being more of a bend than is represented on the plat. The collision took place at least 200 yards from the bend shore, outside of the eddy opposite the point; there being about that part of the river an eddy near half a mile long and 200 yards or more wide. After the collision, witness attempted to get her ashore, but could not do it. The Wabash Valley went down in about two minutes after the collision; before she went down, witness rung the big bell for help. Bulletin had just got straightened up about the time witness commenced ringing the large bell; she didn't stop. The Belle Creole, then descending the river, came to our relief immediately after we commenced ringing for aid; she was much further off than the Bulletin; she took passengers and baggage and towed the wreck ashore—the cabin having parted from the hull. The boat, engine, and apparel were totally lost, except her cabin furniture, which was saved in a damaged condition; the cargo was also entirely lost, except, he thinks, about 100 bales of cotton which were on deck. Witness has been on the river about 15 or 16 years. The Bulletin was not in her proper place; she was between a quarter and half a mile out of her proper position. The steamer Rainbow had passed up just before the Bulletin, making her crossing about the usual place, making her crossing near about Ryal's wood yard, as witness thought from her lights. The Wabash Valley was very heavily laden. The Bulletin seemed to be very light; her guards being high enough out of the water for the bows of the Wabash Valley to run entirely under her. At the time of the collision, witness saw but one person on the Bulletin; he was standing on the hurricane deck in front of the pilot house. Below the College point there is in low water a small bar, but there is no bar between the landing at the point and the place of collision. The usual crossing for ascending boats is represented by the line or mark upon the plat, commencing a short distance above Ryal's wood yard and running up to the College point.

Cross examination.

The load of the Wabash Valley consisted of sack corn, bacon, and something over two hundred bales of cotton, besides cattle and hogs. The cotton was stowed on her guards, in her engine room, and some on her forecastle; it was piled two or three bales high on the forecastle, but he does not recollect exactly how high. The signal light on the Valley

was hung underneath her hurricane deck forward; thinks near the centre of the deck. Witness saw the Rainbow as she passed up; she was about half a mile ahead of the Bulletin. The Belle Creole had landed, and was rounding out just as we passed the Rainbow. The Bulletin's bow struck the bow of the Wabash Valley first, and she was then bounding off, and that made her bound off still further. Witness did not leave the pilot house until the Valley sunk, until her wheels could not turn; he did not see what injury was done to the hull of the boat.

Witness has been a pilot of steamboats on the Mississippi river since 1841, steadily, and was first employed as a steamboat pilot in 1833. The Wabash Valley had no baggage or loading on her boiler deck.

In chief. The signal lights must have been 10 feet above the cotton, and wholly unobstructed by the cotton.

(Signed) THOS. L. BAILEY.

Sworn to and subscribed before me, this 21st April, 1846.

(Signed) ALEX. WALKER,
Associate judge, city court, New Orleans, La.

W. W. Tunstall
vs.
Steamboat Bulletin and Charles B. Church.
} In admiralty, in U. S. district court.

The deposition of John Duncan, taken by consent to be read in the above case.

Deponent resides, when at home, in New York, but has been a river man for seven years past on the western waters; expects to leave New Orleans shortly; was engineer on board the Wabash Valley at the time of the collision with the Bulletin, but was not on watch at the moment of collision; was asleep; was awoke by the shock; sprang up instantly and went out on the starboard guard, and went down to the engines; when witness got out upon the guard, the stern of the Bulletin was just clearing the bow of the Wabash Valley. The large bell of the Wabash Valley was instantly rung for aid. The people on the Wabash Valley were *hollowing* loudly that we were sinking; the Bulletin might have been about 100 yards distant when the bell of the Wabash Valley commenced ringing; she did not stop; she was ascending the river with great speed. The Wabash Valley sunk in a few minutes—say four or five. The captain of the Belle Creole, which was on the opposite side of the river, came immediately to our assistance. The signal light of the Wabash Valley was up and burning, and continued till the last. The map of the river, marked "L. Hunton & Micon," represents faithfully and correctly, as deponent believes, the place of collision; and, except that the point upon the Jeffersonville side is not crooked enough, the said map is correct.

He has been running in the trade between New Orleans and Bayou Sara, and is familiar with the river. The collision took place on the town side of the river, as near as witness could judge, to the right about one hundred and fifty yards from the shore; was below Jefferson point,

but witness would not like to say how far; he is no pilot; but thinks the Bulletin was not in the proper or usual place for ascending boats on that part of the river. He does not think that he ought to express an opinion upon [a] subject not connected with his office on the boat.

Cross examined.

Has never been a pilot on the river; judges of the position of the two boats by seeing the stern of the Bulletin clearing the W. Valley; thinks he can judge of the correctness of the position of boats in the river as he sees them passing. Witness did not see the injury done to the bow of the Valley; she sank too soon. The collision took place between 12 and 1 o'clock. Witness had on his pantaloons and shirt as he lay in his berth, and did not stop to put on any more clothes after the collision. The Valley was about 100 yards from the bend shore when she sank. She sank before the Belle Creole reached the cabin, which remained floating.

The Belle Creole did not reach us until we had floated two or three miles, as near as he recollects.

(Signed) JOHN DUNCAN.

Sworn to and subscribed before me, this 30th April, 1846.

(Signed) ALEX. WALKER.

Associate judge, city court, New Orleans.

William McBride's deposition, taken by consent.

Lives in the State of Arkansas; was a passenger on the Wabash Valley at the time of the collision with the Bulletin; was asleep at the time; was awoke by the shock attending the collision; sprang up and ran out; the boat was sinking very fast; the bell was ringing, and efforts making to get the boat to the shore. He supposes was not more than 5 minutes till she sunk. Witness got out in a yawl. As well as witness recollects there was a light on the bow of the boat.

(Signed) WM. McBRIDE.

No cross examination.

Sworn and subscribed before me, this 30th April, 1846.

(Signed) ALEX. WALKER,

Associate judge, city court, New Orleans, Louisiana.

May 30th, 1846.

John M. Scott, being sworn, states, that he resides in the city of New Orleans, and is the captain of the Belle Creole. On the night of the 27th March last, he was descending the river with his said boat; he had during the night several times passed the steamboat Wabash Valley, and was close to her when he arrived at Choppin and Roman's plantation, just below Jefferson College point, where he rounded to to get a passenger; when he rounded to, he observed the Bulletin, or a boat which has been since ascertained to be the Bulletin, ascending the river, on the same side of the river. He was lying near the shore, or

posite the plantation, when he discovered that a collision had taken place between the Wabash Valley and the ascending boat. He was near enough to hear a voice say from one boat, don't know which, "Stop your engine or you will run into us." He thinks, however, it must have been from the little boat, the Wabash Valley; he distinctly heard the crash, and immediately afterwards the Bulletin commenced crossing the river; the bell of the Wabash Valley instantly commenced ringing; the other boat did not stop, but seemed to increase her speed after the bell commenced ringing. He, witness, hearing the bell of the Wabash Valley ringing for assistance, said to his pilot, that [the] "big boat has sunk the little one; and we must go to her help." We accordingly went down as soon as we could after we heard the bell, and went to the assistance of the Wabash Valley; we sent out the yawl, took up some of the passengers that were floating about in the river on cotton bales, brought the Belle Creole aside of the wreck, took off the persons on board, and afterwards towed the same ashore. When we got to the scene of the disaster, which was but a very moments after the collision, the boat had sunk to the boiler's deck; the starboard side being entirely cut off from the forecastle aft. At the time of collision the Bulletin was under full headway. The Wabash Valley had been running very slow all night; we passed her several times; she seemed to be heavily laden. He has been running between New Orleans and Bayou Sara for the last six years; he runs twice a week; he is familiar with the course of navigation of the river. The Bulletin was not in the proper place for an ascending boat; was at least half a mile out of it; she ought to have made her crossing below. The Wabash Valley was in the usual place for descending boats. The Bulletin was near or nearer the Wabash Valley than was the Belle Creole when her bell commenced ringing for help, and she must have heard it.

Cross examined.

At the time of the collision, witness's boat was at Choppin and Roman's landing, nearly opposite College point. It was not a quarter of a mile from the place of collision; took notice of the boats before they struck; but was not observing them at the moment of collision, until he heard some one cry out as he has stated. The hull of the Valley was under water, and the starboard side swept off, when witness's boat reached her. Don't know either the captain or pilot of the Bulletin.

(Signed) JOHN M. SCOTT.

Sworn to and subscribed before me, this 30th May, 1846.

ALEX. WALKER, *Associate Judge.*

William Elfert, being duly sworn, states, that he was the pilot of the Belle Creole at the time of the collision; he witnessed the collision; he has heard the deposition of Captain Scott read; it presents, fully and fairly, an account of the disaster and the circumstances attending it; he concurs fully in everything therein stated; he was at the wheel at the time.

(Signed) WILLIAM ELFERT.

Sworn to and subscribed before me, this 30th May, 1846.
(Signed) ALEX. WALKER, *Associate Judge.*

F. C. Fulcher, being duly sworn, states, that he was clerk of the steamboat Wabash Valley at the time of the collision with the Bulletin on the 27th March last; that P. R. Lott shipped on said boat Wabash Valley, at Jacksonport for New Orleans, consigned to Messrs. Steele & Baker, two bales of cotton, 14,836 pounds of bacon, 5 barrels of lard, and 232 sacks corn; all of which was on board said boat Wabash Valley at the time of the collision, and was totally lost in consequence of said collision. The annexed bill of lading was signed by W. W. Tunstall in the absence of witness from the boat; part of it was put on board in the presence of witness; the balance was being put on board when he casually left the boat, and he afterwards saw it on board.

No cross examination. B. & M.
(Signed) F. C. FULCHER.

I consent the above may be read in evidence.
(Signed) BENJAMIN & MICON.

Bill of lading annexed to depositions.

Shipped, in good order and well conditioned, by P. R. Lott, on board the steamboat called the Wabash Valley, whereof W. W. Tunstall is master, now lying at the port of Jackson, and bound for New Orleans, to say:

L. 2 bales cotton.
" 5 bbls. lard.
G. 1483 lbs. bacon.
L. 232 sacks corn.

Being marked and numbered as in the margin, and are to be delivered, in the like good order and condition, at the port of New Orleans, (the dangers of the river and fire only excepted,) unto Steele & Baker, or to their assigns, he or they paying freight for the said at the rate of 30 c. per 100 lbs. for bacon, $1 per bbl. for lard, and 10 c. per bale for cotton.

In witness whereof the master or clerk of the said boat hath affirmed to three bills of lading, all of this tenor and date, one of which being accomplished, the others to stand void.

Jacksonport, the 21st day of March, 1846.
(Signed) W. W. TUNSTALL, *Captain.*

Testimony taken by consent on the 29th May, 1846.

W. W. Tunstall
vs.
Steamboat Bulletin and Captain Church.

A. G. Butler, being duly sworn, states, that he resides in Attakapas. He was the mate of the steamboat Wabash Valley at the time of the collision with the Bulletin, on the night of the 27th March last; the

collision occurred between 12 and 1 o'clock at night. The Wabash Valley was descending the river on the right hand shore; the collision took place about 150 yards from the shore. He was on watch at the time; saw the Bulletin, perhaps, first at the distance of about two miles. The Rainbow was ascending the river ahead of the Bulletin. Witness supposed the Bulletin would make her crossing where the Rainbow did, which was the usual place, and was about a mile below where the collision took place. She started, as I thought, to make her crossing, and was some considerable distance out in the river. We then did not think of a collision, and immediately she took a tack to the larboard, and came across the bows of the Wabash Valley, the Wabash Valley then swinging into the bend to avoid a collision. When it was discovered that she intended to come inside of us, the pilot of the Wabash told me to sing out to the Bulletin "to stop, or they would run into us." I did *hollow* to them to stop; they replied, "back your boat, back your boat." We had then stopped the engines of the Wabash Valley, and were floating. The pilot rung the bell of the Valley instantly; rung the bell to back her, and her headway was checked when the boats struck. The Bulletin did not stop her engine till after the collision. The Wabash Valley was swinging with the bow in towards the shore, in consequence of her backing. The collision took place by the Bulletin striking the bow of the Wabash Valley with her chock forward of the boilers; she then passed entirely over the bow of the Wabash Valley, her starboard wheel running over the forecastle. The Wabash Valley was very heavily laden, and commenced sinking immediately. The big bell of the Wabash Valley was immediately rung. The Bulletin didn't stop, but kept on her course up the stream. In a few minutes the Belle Creole came to our assistance, assisted in saving the passengers and towing the wreck ashore. The Bulletin was near enough to have heard the bell when it was rung; indeed, it was immediately after the collision.

Cross examined.

Witness has no interest in the Wabash Valley. The Valley touched the Bulletin on the starboard side. The Bulletin ran over the bow of [the] Valley. The guards struck first, and the wheel then went over the bow. Thinks the Valley was 150 yards from shore at the time of collision, as near *as near* as witness could guess by night. Witness was on the hurricane roof, forward of the pilot house. Witness could see the Bulletin for a mile and a half to two miles before the collision. Immediately on striking, witness called out to the watchman below to try the pumps. He called out, in reply, that it was of no use; that her whole bow was cut off, and she was going down.

(Signed) A. G. BUTLER.

Sworn to and subscribed before me, this 29th May, 1846.

(Signed) ALEX. WALKER, *Associate Judge*.

James P. Magning, being sworn, states, that he resides in St. Louis, Missouri; he was a passenger on the Wabash Valley at the time of the

collision with the Bulletin, on the night of the 27th March last; he had not returned to his berth, and was up at the time of the collision; he was up on the hurricane deck, and before the collision, and saw two boats ascending the river, supposes about a mile and a half distant; both were coming in the same direction, when first seen by witness; one crossed over to the left hand point, (left to the descending boat,) the other still continued up the bend, when witness left the hurricane deck; at that time witness thinks the Wabash Valley was 150 or 200 yards from the shore. He was talking with the engineer after he came down; and, standing in the passage between the engine and the boilers, he again saw the boat, which proved to be the Bulletin, seeming to come direct towards the Wabash Valley. The boats were not then very far apart, the Bulletin under full headway; the engines of the Wabash Valley were run to back her; and after the engines had commenced backing, witness ran up the steps, on the guards, and saw the boats strike. The Bulletin ran entirely over the bow of the Wabash Valley, her wheel making a great crash as she passed over the broken timbers of the bow of the Wabash Valley. As soon as the boats got clear of each other, the bell of the Wabash Valley commenced ringing. The Bulletin straightened up, and went on. Witness was on the boiler deck when the signal light of the Wabash Valley was put up; that every one was up at the time of the collision, and was up till the wreck was got ashore. He is positive the engines of the Bulletin could not have been stopped till after the collision, and does not know that they were stopped even then. The Bulletin was hailed frequently, in a loud manner, to come back, and *were* informed that the Wabash Valley was sinking, but no attention was paid to the cries for help. The Wabash Valley sank immediately; the yawl was sent ashore with the children, and very soon the Belle Creole came over to our assistance.

Cross examined.

The hull of the Wabash Valley sank immediately after the collision. The Rainbow had passed up a very short distance before the Creole. When witness first saw the boats, they were apparently very near each other. Thomas Bailey was at the wheel of the Valley at the time. Witness was on the hurricane deck when the boats first came in sight, but went down, and was between the boilers and the engine, conversing with the engineer, when the boats struck. The Valley had made a few revolutions towards backing before they struck. Witness ran up the steps on the boiler deck, or upper guards, and from *the* place saw the boat strike, and heard the wheel of the Bulletin making a great crash over the broken timber; and, when she struck, heard some voices saying come back, you have sunk us. The bell of the Valley was rung immediately, and very loud. Witness left the engineer just as the engineer was backing, and ran up the steps before the boats struck. The Bulletin struck on the same side that witness ran up. As we were going down, the Bulletin struck on the left side. Witness thinks of going home to St. Louis in a few days, but is not certain. Witness was *a* little scared as any on board, having before been on board a boat

that sunk. Witness tried to save the lives of some of the children, and succeeded in doing so. The children had gone ashore in a yawl before the Belle Creole reached us.

(Signed) JAMES P. MAGNING.

Sworn to and subscribed before me, this 29th May, 1846.

(Signed) ALEX. WALKER,
Associate judge.

And on the 22d day of April, 1847, the testimony of Daniel Hall was offered in evidence by respondents, and filed, to wit:

Daniel Hall says, he was deck hand on the Bulletin; his watch had just finished, and he was waiting for the next watch to come up, when the collision occurred; first saw the Wabash Valley about fifteen yards off, before the collision; saw no light on her. The Bulletin was running up stream, on the larboard side, and the Wabash Valley came into her on the starboard side; the bow of the Wabash Valley struck the Bulletin about five feet forward of the wheel-house. Witness was standing close to the capstan when he first saw the Wabash Valley. Heard the bells ringing from both boats, the engine bells he means, just as the boats struck; did not hear the big bell of the Wabash Valley, neither before nor after, nor at the time of the collision. The engine bells were ringing on both boats; did not examine the Bulletin after she got clear of the Wabash Valley; the Wabash Valley, on striking, dropped astern; the shock was a heavy one; the Bulletin rolled over on her beam ends. Witness perceived no damage done to the Wabash Valley. Witness did not think she was much hurt. She dropped astern, and [he] perhaps saw no more of her; heard no cry for aid, nor cry of distress, from the Wabash Valley. The Bulletin had her signal lights lighted with gas, one red and two green. At the time the Bulletin rolled over, she rolled on the larboard side; she was then about thirty or forty yards from the shore.

Cross examined.

His attention was not called particularly to the signal lights at the time of collision, but he does not at this time recollect of observing the signal lights. The side of the Bulletin and the bow of the Wabash Valley came in contact; and further he saith not.

(Signed) DAN'L HALL.

Sworn to and subscribed before me, this 16th April, 1846.

(Signed) ALEX. WALKER,
Associate judge.

And on the 22d day of April, 1847, the testimony of L. Drouillard was offered in evidence by respondents, and filed, to wit:

Louis A. Drouillard was pilot of the Bulletin, and was at the wheel at the time of the collision with the Wabash Valley; has been a pilot on the river three years; commenced learning his business as a pilot six years ago; has been the whole time on the Mississippi river. On the

night in question, witness had taken his place at the wheel, about two miles below the spot where the collision happened, and was keeping his regular course up stream, when he perceived the Belle Creole ahead, and heard a bell, which he supposed to come from her as she rounded to at the time; and, whilst he was watching her to see her course, Mr. Church, who was on the hurricane deck, called out to him, Louis, what the d——l is that; and at the same instant witness saw a steamboat come quartering down on the Bulletin. She had already got by the starboard chimney, and he instantly saw that there was no chance of avoiding a collision, and rung the bells to stop the engines; just as they were stopped the collision occurred; the engines of the Wabash Valley were going at the moment of the shock; he don't know whether ahead or backing; the bow of the Wabash Valley struck the Bulletin on the starboard guards, two or three feet forward of the blacksmith's shop. The boats in striking just drifted by each other. They did not remain fastened together at all. The jack-staff, and a piece of the chock where the hawser runs through, of the Wabash Valley were left on the Bulletin. The Bulletin was not touched by the Wabash Valley in any part of her, except at the spot above mentioned in her side. The shock did not appear to witness to be violent. He judged from the Bulletin's receiving no serious damage that the Wabash Valley was not hurt. Could not see whether she had cotton piled on her bows; she came in so quick witness could not see. Saw no light on her that he recollects. She rung no bell that witness could hear. Before nor after the collision, heard no cry for help; no cry of distress; had no suspicion that there was any danger for any one on the Wabash Valley at the time. The Bulletin was running about twenty or thirty yards from shore, in the proper place for an ascending boat. The accident occurred about a mile and a half, or two miles, below Jefferson College. There is a bar at the right hand point at Jefferson College. In running up the river, the bar at Jefferson College projects so far into the river that witness always runs a boat, when going up, close to the left hand shore, especially at night, till he gets opposite, and then runs straight across. The reason is, that if he were to run up on the right side, the bar would make it necessary for him to keep so far from shore as to render it difficult for a descending boat to know on which side to pass him. The Wabash Valley was not in her proper position at the point where the collision took place. She ought to have been in the middle of the stream; and he knows of no cause to have prevented her being there. It was about three or four, or five, minutes from the time the engine stopped on the Bulletin, till she went ahead again.

Cross examined.

Witness makes St. Louis his home. He will be 21 years of age in a few days. Has no interest in the suit, nor in the Bulletin, *then* his reputation is at stake. Did not see the Wabash Valley till he was notified by Capt. Church's brother. Don't know where Capt. Church was at the time of collision. During the 3, 4, or 5 minutes that the engines

were stopped, he was holding his boat steady with the current. He supposes that, when he went ahead again, the boats were 2 or 3 lengths apart. During the whole of that time witness heard no bell from the Wabash Valley, nor no voice whatever. Did not perceive any great excitement on board the Bulletin. Don't know whether any of the crew of the Bulletin took to the yawl. Witness didn't see that. Immediately after the collision, witness still observed the Creole laying along shore. Did not see the Creole when she left the shore, having rounded the point before she left. Descending boats generally keep the middle of the channel of the river, and ascending keep the shore until they strike the current, and then make their crossing. The position of the Bulletin, at the time of the collision, was that usually occupied by ascending boats at that point. The bar at Jeffersonville College, at the time of collision, extended about one fourth of the distance across the river. The Bulletin was not heavily laden; in pretty fair trim for running.

(Signed) LOUIS A. DROUILLARD.

Sworn to and subscribed before me, this 18th April, 1846.

(Signed) ALEX. WALKER,

Associate judge city court, New Orleans, Louisiana.

And on the 22d day of April, 1847, the testimony of William McGee, Breton Robinson, and A. W. Church, were offered in evidence by respondents and filed, to wit:

William McGee sworn says, he is head engineer of the steamboat Bulletin, and was on board the night of the collision. It was witness' watch. His watch had just begun. He did not see the Wabash Valley at all, either before or after the collision. He was aft at the time, where he had been in search of a fireman who had not yet come on his watch, and just as he was turning back to come forward, he heard the bell of the engine ring to stop the boat, and he instantly rushed to the engine, and stopped her immediately. He can't form any idea how long it was before they went ahead again; there was so much noise, confusion, and the steam blowing off, that he can't say how long it was. Felt the shock of the collision of the two boats; it was slight. The Bulletin was about a hundred or a hundred and fifty yards from the left hand shore. There was plenty of room between the Bulletin and the right hand shore going up, for any descending boat to have the full benefit of the current. Witness thinks no descending boat has any right to be as near the shore as the Wabash Valley was at the point of collision, unless she was landing. The proper place for the descending boat is in the middle of the river. The river, at the place of collision, was about the average width of the Mississippi. The Bulletin struck on the starboard guard, near midship, a little forward of the steps. The bows of the Bulletin were not touched, save small injury was done to the side of the Bulletin. The cup of the chock was split, and a couple of the steps stove in. Capt. Church was up at the time of the accident; witness saw

him and the carpenter together on the guard, where the Bulletin was struck, at the instant of the collision. Heard no bell rung from the Wabash Valley before the collision. Heard no cry for help from her; nor had he any idea in the world, from the slight damage done to the Bulletin, that the other boat was in any danger. Witness felt no jar of the wheel, nor any jar that could make him suppose that the wheel had run over anything.

Cross examined.

He means to say that Capt. Church was up before the engines started again.

(Signed) WM. V. McGEE.

Sworn to and subscribed before me, this 28th May, 1846.

(Signed) ALEX. WALKER,
Associate judge.

Brerton Robinson, assistant engineer, was at the larboard engine at the moment of collision. Did not see the Wabash Valley before she struck, but saw a light go by the Bulletin, and felt the shock an instant after. The engine of [the] Bulletin was stopped at instant of collision. She was about her length from shore, running up on the left hand. Noticed her position just before, and just after, the collision. Heard no cry from the Wabash Valley, nor knew that she was in any danger. He himself stopped the larboard engine when the bell rung. It was about a minute or two before she went on again.

(Signed) BRERTON ROBINSON.

Sworn to and subscribed before me, this 28th May, 1846.

(Signed) ALEX. WALKER,
Associate judge.

Anson W. Church, is brother of Capt. Church, and 2d engineer of Bulletin. Was up at time of collision. Saw the Wabash Valley about two lengths from the Bulletin before she struck the Bulletin. Can't say at that moment how far she was from shore *at that instant*, but a few minutes before, when he left his watch, the Bulletin was running close up the left bank, about 30 steps from the shore. The two boats were seen by witness to come together. The bow of the Wabash Valley came into the starboard guard of the Bulletin. The bow of the Bulletin did not touch the Wabash Valley at all. Witness watched the Wabash Valley from the moment he saw her till she struck the Bulletin. Witness was in the watch-house with Smith, his partner on the watch, at the time of the collision. They had gone into Wabash before going to bed. Capt. Church rushed out of the hall door, shoving aside witness and Smith, just before the shock, in his hurry to get forward. He thinks it was just before the shock; he can't say why he rushed out before the shock, but supposes he saw the boat or something.

Cross examined.

Never heard his brother say he was in his berth at the time the first alarm was given.

(Signed) ANSON W. CHURCH.

Sworn to and subscribed before me, this 28th May, 1846.

(Signed) ALEX. WALKER,
Associate judge.

And on the 22d day of April, 1847, the testimony of David Hukill was offered in evidence by respondents and filed, to wit:

David Hukill, sworn, says, he does not live in New Orleans; will leave town in about two weeks; was on board the Bulletin the night of the collision with the Wabash Valley; was a deck hand; it was his watch; saw the Wabash Valley about a second before she struck. Witness said to one of the engineers standing near, "What in the hell is that?" and had scarcely said so when the Wabash Valley struck the Bulletin; was standing at the moment at the after end of the boilers on the starboard side; the bows of the Wabash Valley came into the side of the Bulletin on the starboard side forward of the side house; this was below Jefferson college about two or three miles. Witness says that the Bulletin was running up about thirty yards from the larboard shore; thinks it was between twelve and one o'clock; it was a star light night; he could see the shore; the starboard engine was stopped on the Bulletin just at the moment of the shock; he does not know whether the larboard engine was or not; the Bulletin had a signal light which witness saw the watchman light; it was lighted with gas; it is a bright light, and consists of a red light in front and two green lights quartering off from the red light. Witness heard no bell from the Wabash Valley; neither before nor after the collision; saw no light on her; he took particular notice of that; witness heard no cry from the Wabash Valley of any kind for aid; no cry of distress; did not think that she had hurt herself much from the slight damage done to the Bulletin; had no suspicion at all that she was in danger of sinking; heard no one on board speak of any apprehension that the Wabash Valley was sinking or in danger. Witness examined the Bulletin that night; found the Wabash Valley's forward chock on the guards on the starboard side of the Bulletin; he also saw some of the planks of the blacksmith's shop on the side house of the Bulletin were stove in; saw next day on the hurricane roof of the Bulletin a piece of a staff which did not belong to the Bulletin. Witness examined all round the Bulletin, and found no marks of her having come within contact with the Wabash Valley on any other part of her [other] than that above mentioned; no part of her bow was injured or bruised or scraped at all; is certain that he saw the first shock of the two boats; the Wabash Valley came quartering across the river into the Bulletin, and witness saw her as she struck.

Cross examined.

Witness lives in Wheeling, Virginia; is a little over 21 years of age; has been 9 years on the river; has been in the employment of Captain

Church ever since this accident; didn't see the Wabash Valley until the instant of the collision. Witness was not alarmed at the prospect of a collision; he is used to that; he was particular in looking for signal light, for he has been on several boats where collisions occurred, and he is always looking for signal lights; he saw Captain Church about three hours before the collision; didn't see him again until he came to his watch in the morning at 4 o'clock.

Don't know the name of the engineer to whom he made the remark stated above. The engine bell was rung to go ahead instantly upon the Wabash Valley dropping astern of the Bulletin; didn't hear anything said by the persons on either boat at the time of collision; he was paid off yesterday by the Bulletin, but the mate wants him to go up again, and he intends to do so if he is well enough.

Re-examined.

This was his first trip on the Bulletin; he went on board of her before breakfast in the morning; she started in the afternoon, and the accident occurred the same night; knew none of the officers on board, and cannot give the name of the engineer he spoke to, because he did not know it, nor does he now.

his
(Signed) DAVID X HUKILL.
mark.

Sworn to and subscribed before me, this 16th April, 1836.

ALEX. WALKER,
Associate Judge.

And on the 22d day of April, 1846, the testimony of John S. Smyth was offered in evidence on the part of the respondents and filed, to wit:

WILLIAM W. TUNSTALL
vs.
STEAMBOAT BULLETIN and Chas. B. Church.
} U. S. district court.

Testimony of witnesses for defendants taken by consent.

John S. Smyth, being duly sworn, says, he is third engineer on board of steamboat Bulletin; was on board on the night of the collision with the Wabash Valley; witness was standing at the wash-house door; was just going in to wash himself before going to bed, his watch being ended, when he first saw the Wabash Valley; witness had just time after seeing her to go from the wash house to the hall door, before the boats came together; the wash house is on the starboard side; the Bulletin was going up on the left hand shore, and the Wabash Valley was coming down; is not much acquainted with the river, and cannot say how far above the city the collision took place. At the time he left his watch to go to the wash house, the Bulletin was running up the left bank not more than twice her width from the shore, does not know how far she was from the bank at the moment of collision; he saw the boats

come together; the bow of the Wabash Valley came into the Bulletin about eight or ten feet forward of the steps that lead up into the cabin; the bow of the Bulletin did not strike the Wabash Valley; the chock of the Bulletin was split and the steps injured, and some of the bulkhead and wheel-house boards were split; it was between twelve and one o'clock at night; the night was tolerably dark; clear, he believes, and no moon. Witness did not know what injury had been done to the Wabash; first heard that she was sunk after he arrived at St. Louis. The Wabash Valley was about twice her length off when witness first saw [her;] she was quartering down stream, inclined across the river; she struck the Bulletin's bows on eight or ten feet front of the steps; as witness was coming forward he met the captain on the guard; he shoved me out of the way and run by me; he went to the wheel house; this was just before the Wabash Valley struck us, and on the same side that she struck; he was running, as witness supposed, to see what was the matter; the wash house is up on the boiler deck, and the guard where he met the captain was the upper guard of the same deck. Witness heard the bell ring, and both engines of the Bulletin had stopped, and remained so for ten or fifteen minutes before she started again.

Cross examined.

He is still on the Bulletin in the employment of Captain Church. He can't remember whether it was before or just after the collision that Captain Church passed him on the guards. He came out of the hall; Lewis Druillet was the pilot on watch at the time of collision; during the 10 or 15 minutes that the engine was stopped, after the collision, we were engaged in examining what damage was done to the Bulletin; 'twas so dark we couldn't see what damage was done to the Wabash Valley. She went by so quick, not much of a shock was produced by the collision. Anson W. Church, the brother of the captain, was 2d engineer. Capt. Church had another brother on the boat, he thinks Horatio, who had been on her three or four trips, not in any particular office; used to stand watch sometimes. He didn't inquire whether any damage had been done to the Wabash Valley for the reason that both boats pass; he saw the Wabash Valley after the collision, as he thought, going on down. Before the collision, he does not know of any alarm or noise to attract particular attention. He can't say positively whether the engines of the Bulletin stopped before the collision; he thinks 'twas just about the time.

(Signed) JOHN S. SMYTH.

Sworn to and subscribed before me, this 28th May, 1846.

(Signed) ALEX. WALKER,
Associate Judge.

And on the 22d day of April, 1847, the testimony of H. L. Church was offered in evidence by respondents, and filed, to wit:

Horatio L. Church is a brother of Capt. Church; was on board of the Bulletin at the time of the collision; was a passenger; was up on

the forward part of the hurricane roof at the time. Saw the Wabash Valley, as near as he can judge, at about three lengths distance from the Bulletin before the boats met; it was not her signal light that attracted his sight first, although he can't say that there may not have been a signal light on the Wabash Valley; it was her bow loaded with cotton coming quartering down on the Bulletin that he first saw; the Bulletin was from thirty to forty yards from shore, as near as he can judge. When he saw the Wabash Valley coming into them he went towards the side where she was coming, and at the same time glanced over his shoulder to see how far he was from shore, as he felt satisfied at the time that the side of the Bulletin would be stoved in, and he wanted to see how far it was to the shore, for at the instant he feared the Bulletin's side would be stoved in, and he wished to see the chances of getting ashore; witness saw the shock; the descending boat came quartering down the river towards the Bulletin, and her bow came into the Bulletin in her side, at a point since ascertained by measurement of surveyor, as reported by them, to be one hundred and twenty-five feet from her stern; it was forward of the wheel-house of the Bulletin, from four to six feet forward of the siding of the wheel-house; witness did not feel the shock severely; perhaps the place where he stood made him feel it less, and he must confess he was somewhat alarmed at seeing a boat coming into the Bulletin in her side; witness did not himself feel a keeling over of the Bulletin of which he has heard others on board speak; heard no bell from the Wabash Valley; before the collision he heard a bell, and at the same time he saw the Belle Creole round into the shore, and judged the bell to have been rung by the Belle Creole; he saw the Belle Creole distinctly by her lights, but did not know nor see that there was a boat coming down that was nearer the Bulletin than the Belle Creole, nor can he account for the fact of the Wabash Valley not being seen from the deck of the Bulletin at the same time that the Belle Creole farther off was seen. What he means to say is this, that he saw a light ahead which was not known at first to be a steamboat, but at the same time a bell was rung, and then the light turning into the shore showed that it was a steamboat rounding to, which afterwards proved to be the Belle Creole, and just as the Belle Creole had straightened up, the Wabash Valley was seen for the first time close to the Bulletin. He judges she had just straightened up by the difference in the range of lights. The moment the Belle Creole was first seen he was intently engaged in watching her motions, for it was necessary, on hearing her bell ring, to discover which way she was about to turn in order to keep clear of her; he can't say where his brother was at the moment of the collision; heard a voice that he supposed to be his not long before the collision; saw his brother as soon after the collision as he saw any one on board, except the mate, that was sleeping in the officer's cabin on the hurricane deck, near where he stood; the engines were stopped on board the Bulletin; witness never dreamt that any serious damage was done to the Wabash Valley after looking at the place where the Bulletin was struck; the damage done to the Bulletin being so slight, and the Wabash Valley

having so decided an advantage in the manner of meeting her; witness heard no bell from the Wabash Valley after the collision, nor cry of distress, nor any thing to create in his mind any suspicion that there was the slightest danger to any one on board. When witness first saw the Wabash Valley he said to the pilot "what in the devil is that," and then said "there is a boat coming right into us," and then hallooed to the people on the Wabash Valley, "back her;" witness heard nothing said from either boat till at the moment of coming together, when he heard a voice, apparently from the Wabash Valley, crying out "Ah, God damn you," or "there, God d. y., he can't say which; witness examined the Bulletin as soon as he could get below, and could discover no mark or sign or scratch to show she had come into contact with any other boat at the spot where he saw her struck by the Wabash Valley; a small piece of the chock from the bow of the Wabash Valley, and a piece of her jack staff were left on the Bulletin by the collision; the piece of chock on the starboard guard, and the piece of jack staff on the hurricane deck; witness saw both pieces that night.

Cross examined.

Has no pecuniary interest in the result of this suit; is a river man. Upon being asked if he was not greatly agitated and alarmed at the time of collision, he answers that he knows he was not so much alarmed as not to know what he was doing. The Bulletin was on the right hand side of the river, descending. The "Belle Creole" was endeavoring to land on the same side, as he supposed; he cannot speak with certainty as to the distance of the boats from the shore at the time of collision; when witness went below, which was as soon as he could, he found both engines of Bulletin stopped; can't say how long they were stopped; witness was on deck looking out in place of his brother; he thinks his brother, when he first saw him after the collision, had his coat on; he supposed that at the time of the collision the Wabash Valley was backing, but don't know it; did not look back to see whether any damage had been done the Wabash Valley after she disappeared aft of the wheel of the Bulletin; did not hear any bell upon the Wabash Valley after the collision; after the collision didn't see the Belle Creole; he does not know that the engines of the Bulletin were stopped before the collision; after the collision witness went below; about the time of the collision there was a good deal of confusion amongst the deck hands and firemen; it was said that some of them had gotten into the yawl; witness cannot tell who it was that made the exclamation, above referred to, of "ah, you have got it, or "there, you have got it;" but did suppose it came from the Wabash Valley.

(Signed) H. L. CHURCH.

Sworn to and subscribed before me, this 18 April, 1846.

(Signed) ALEX. WALKER,

Associate judge city court, New Orleans, Louisiana.

And on the 22d day of April, 1847, the testimony of J. J. Kercheval was offered in evidence by respondents, and filed, to wit:

U. S. district court.

WILLIAM W. TUNSTALL
vs.
STEAMBOAT BULLETIN and Chs. B. Church.

Testimony of witnesses for defendants, taken by consent.

John J. Kercheval, sworn, says, he will leave town to-morrow probably; is not a resident of New Orleans; profession is that of a steamboat captain; was a passenger on board of the steamboat Bulletin on the night of the 27th March last, when she came into collision with a steamboat, of which he did not then know the name, but understood since to have been the Wabash Valley; the Bulletin was the ascending boat, and the Wabash Valley descending; at the moment the boats struck witness was in his room lying down, he thinks asleep, but he jumped up at the instant of the shock and ran out, when he saw the boats not yet entirely clear of each other. The following was, at that moment, their position, viz: The descending boat was just dropping back astern of the Bulletin. The first thing witness did on seeing the two boats was to run over on the larboard side of the Bulletin to see how far she was from shore, as it struck him at the moment, he being somewhat experienced, that a difficulty might occur arising out of the collision. The Bulletin was running up the shore, which appeared to be perfectly straight, not more than thirty yards from the shore, as witness should judge, which is as near as any boat could run with safety at night; she was running near the left shore going up, perhaps two or three miles below Jefferson college. Witness then returned on the other side—the starboard—of the boat. Witness saw a pile of lumber, which he had not seen there before, and which he, at the time, judged to have come from the other boat, lying forward of the side house, on the starboard guard of the Bulletin. Nobody on board the Bulletin that witness heard that night appeared to know what boat it was. Witness did not, at the time, judge that any damage had been done to the other boat. The shock, as far as he could judge, was a very slight one; and witness could tell pretty well, as he has been boating for the last ten or thirteen years. The river, at the place of the collision, is of its average width—he supposes about a mile wide. At the time witness saw the Wabash Valley she was just on the starboard quarter of the Bulletin, dropping back, and of course out of her proper position. She ought to have been, as near as possible, in the middle of the river. Does not know whether the Bulletin had a signal light. It was a starlight night; but witness did not notice whether there was a moon. Witness could see the shore distinctly. Witness heard no one on board the Bulletin suggest any apprehension that the Wabash Valley had been injured, or required aid; heard no cry for aid from the Wabash Valley; heard no bell nor noise from the Wabash Valley which indicated her to be in distress. Witness remained up altogether about five minutes. The next morning witness examined particularly the Bulletin, in order to discover at what part she had come into collision with the Wabash Valley.

About eight or ten feet, not more than ten feet, forward of the side house, on the starboard side, witness discovered the point of a boat's stern plate on the nosings of the Bulletin; the chock at the same place was slightly shivered, and a few of the planks in the side house broken in. A piece of the jack staff, or what was supposed to be the jack staff, of the descending boat, was then seen by witness on board the Bulletin, on her roof, just forward of the side house or wheel house; found not a scratch on any other part of the Bulletin. From witness' experience, he does not judge it possible that these two boats could have come into contact, at any other part than above mentioned, without some trace being left on the Bulletin to show where the shock *have* occurred; and witness walked round the boat the next morning, and could not discover anything else; very little was thought about it next day; there were some surmises as to what boat it was, but, as far as witness could hear, nobody thought that any serious damage had been done. The Bulletin is lighted up as well, probably better, than any boat on the river; she is lighted with gas. From his experience on the river, the slightness of the shock, and the slight damage done to the Bulletin, witness at the time did not suppose it possible that any boat could be sunk by the collision.

Cross examined.

Witness went on the Bulletin on that trip to St. Louis; has no interest in this suit. The "difficulty" which witness says he anticipated, and which induced him to observe the distance of the Bulletin from the shore, was the probability of a lawsuit from the collision. Witness saw Mr. Church, the brother of the captain, standing on the guard of the Bulletin, forward of the wheel-house, when witness first came out; saw Capt. Church before he retired to bed; does not know whether Capt. Church was awake at the moment of collision or not. He judges there were some 30 or 40 passengers aboard the Bulletin. He didn't see many of the passengers up at that time. The Bulletin was not heavily laden. The Bulletin, witness supposes, would measure about five hundred tons; did not go on the lower deck the night of the collision. Witness had no particular object in making the examination next morning. Does not know whether the Bulletin stopped her engines or not. Can't say whether the Bulletin was on the "Bend side" or "Bar side" of the river. He is positive as to the distance of the Bulletin from the shore. Is not positive whether the collision was above or below Jeffersonville college; don't pretend to be a pilot. Didn't hear any jarring of the wheel of the Bulletin. Witness went to bed early in the evening, and didn't rise until aroused by the collision. When asked how he can give the opinion that the Wabash Valley was out of her position when he declares that he does not know what part of the river the collision did take place, he answers, that he means to say, if the collision took place 2 or 3 miles below Jeffersonville college, then he thinks the Wabash Valley was out of her place. He is not sufficiently familiar

with the river to judge of localities in the night. Witness is sufficiently familiar with the river in the day time to know about these matters.

(Signed) JOHN J. KERCHEVAL.

Sworn to and subscribed before me, this 16 April, 1846.

(Signed) ALEX. WALKER,
Associate judge.

And further, on the 23d day of April, 1847, a certificate from the inspector of vessels for the port of Vicksburg, State of Mississippi, was offered in evidence by the libellant, and filed, and is as follows:

By authority.

UNITED STATES OF AMERICA,
Port of Vicksburg, State of Mississippi:

Be it known to all whom it may concern, that on the ninth day of February, one thousand eight hundred and forty-six, I, Samuel Harman, inspector of vessels propelled in whole or in part by steam, for the port of Vicksburg, being duly appointed, commissioned, and sworn, for that purpose, at the request of the owner of the steam vessel called the Wabash Valley, repaired on board said vessel, whereof W. W. Tunstall is master, then lying within the district of Vicksburg, and examined the condition of the hull and appurtenances of said vessel, and do hereby certify, that the said vessel was built at Freedom, State of Pennsylvania, in the month of Sept., 1844; is 91$\frac{2}{95}$ tons burthen; is now one year and three months old; has been running since she was built; said boat is in good condition and well equipped, and that, in my opinion, the said vessel is sound, and in all respects sea-worthy, and is now fit for the transportation of freight or passengers.

Given under my hand at the port of Vicksburg, this ninth day of February, year of our Lord one thousand eight hundred and forty-six.

(Signed) SAMUEL HARMAN,
Inspector.

And further, on the 23d day of April, 1847, a copy of the enrolment of the steamboat Wabash Valley, was offered in evidence by the libellant and filed, and is as follows:

Acts of Congress of the United States.—Enrolment.

No. three. Enrolment in conformity to the acts of the United States of America, entitled "An act for enrolling and licensing ships or vessels to be employed in the coasting trade and fisheries, and for regulating the same;" and "An act to provide for the better security of the lives of passengers on board of vessels propelled in whole or in part by steam." William W. Tunstall having taken or subscribed the oath required by the said act, and having sworn that he, said William W. Tunstall, citizen of the United States, sole owner of the ship or vessel called the Wabash Valley, of Cincinnati, whereof William W. Tunstall is at present master; and as he hath sworn he is a citizen of the

United States, and that the said ship or vessel was built at Pittsburg, in the State of Pennsylvania, in the year 1844, as appears from her enrolment, dated at Cincinnati, 10th day of July, 1845, and having changed owners, is now surrendered for renewal. And said certificate of enrolment having certified that the said ship or vessel has one deck and no mast, and that her length is one hundred and twenty-nine feet, her breadth nineteen feet nine inches, her depth three feet nine inches, and that she measures ninety-one $\frac{8}{95}$ tons, and that she is a steamboat, has a cabin above and no figure head. And the said William W. Tunstall having agreed to the description and admeasurement above specified, and sufficient security having been given according to the said acts, the said steamer has been duly enrolled at the port of Vicksburg.

Given under my hand and seal, at the port of Vicksburg, this 15th day of January, in the year one thousand eight hundred and forty-six.

(Signed) EDMUND TAYLOR, [SEAL.]
Collector.

And further, on the 22d day of April, 1847, the following instrument of protest was offered in evidence by respondents and filed, and is as follows:

UNITED STATES OF AMERICA,
State of Louisiana, city of New Orleans:

By this public instrument of protest, be it known, that on the thirty-first day of March, in the year of our Lord one thousand eight hundred and forty-six, and of the independence of the United States of America the seventieth, before me, Greenbury Ridgely Stringer, a notary public in and for the parish of Orleans, dwelling in the city of New Orleans, State of Louisiana, duly commissioned and sworn, personally came and appeared Wm. W. Tunstall, master of the steamboat called the Wabash Valley, and noted, in due form of law, with me, said notary, his protest for the uses and purposes hereafter mentioned:

And now, at this day, to wit, the day of the date hereof, before me, the said notary, at the city of New Orleans aforesaid, again comes the said W. W. Tunstall, and requires me to extend his protest; and, together with the said W. W. Tunstall, also come F. C. Fulcher, clerk; A. G. Butler, mate; Thos. L. Bailey, pilot; Gideon Witham, engineer; Henry Klanke, pilot; James Neal, watchman; and William Butler and C. Johnson, deck hands; belonging to the aforesaid steamboat; all of whom being duly sworn on the holy evangelists of Almighty God, voluntarily, freely, and solemnly, do declare and depose as follows, that is to say, that on Friday, the twentieth day of March, 1846, at about 11 o'clock, A. M., he, the said Wm. W. Tunstall, departed in and with the said steamboat, as master thereof, from Batesville, Ark., (on the White river,) having on board the said steamboat a cargo of merchandise, and bound for the port of New Orleans, La.; that the said steamboat was then stout, staunch, and strong; had her cargo well and sufficiently stowed and secured; was well manned, tackled, victualled, apparelled, and appointed; and was in every respect fit for the

voyage she was about to undertake. Got up steam on the day and date as above written, with part of cargo on board, and proceeded down White river; on the same evening arrived at Foster's landing and received on board more cargo. Next morning, Saturday 21st, left said landing, and continued on the passage from day to day, with nothing material occurring worthy of particular note up to Friday, 27th March, instant. On the following morning, about half an hour past midnight, being at this time clear and starlight, the pilot of the Wabash Valley, Thomas L. Bailey, who was then at the wheel, first discovered a steamboat, distant about two miles, running up the Mississippi river. At this time the Wabash Valley had her signal lantern well lighted and placed in the usual place on her hurricane deck, and was running in the regular channel taken by steamers going down the said Mississippi, being in the middle of the river, on the "Bend side" so called, (about one mile below Jefferson College.) Soon after the steamer Rainbow passed, taking the customary course, when the pilot at the wheel observed to the mate, that the next boat coming was above her regular crossing point, and running too near the bend side of the river, and as she approached nearer, they hailed the steamboat (since ascertained to be the Bulletin, Church, master,) to stop their boat to prevent running into the Wabash Valley, and instantly after stopped both the engines of the said Wabash Valley, and rung the bell to have her backed, but too late to prevent the disaster; and the said boat Bulletin having continued on without stopping, immediately run into the steamer Wabash Valley, striking her with great force on the larboard side, near the chock, cutting her bow completely off, when the boat sunk to her cabin floor in less than three minutes after, the crew and passengers barely saving their lives. Made signals of distress immediately, by constantly ringing her bell, for the Bulletin to remain by us, but she proceeded on without once stopping to render any assistance; the boat at this time being a complete wreck, and the hull parted from her cabin.

Continued making signals for assistance, ringing bell, &c.; when shortly after Capt. Scott, with the steamer Bell Creole, came alongside, took the passengers and crew from her, and afterwards towed the wreck to the bank of the river, where she now remains nearly under water; immediately made all due exertion to save property; got out part of her cargo, cabin furniture, &c.; when, finding nothing further could be done for the general good, the officers and crew (after taking good care of the property saved) proceeded on, and arrived in the city of New Orleans without further disaster or delay.

And the said master further says, that as all the damage and injury which already has or may hereafter appear to have happened or accrued to the said steamer, or her said cargo, has been occasioned solely by the circumstances herein before stated, and cannot nor ought not to be attributed to any insufficiency of the said steamer, or default of him, this deponent, his officers or crew, he now requires me, the said notary, to make his protest, and this public act thereof, that the same may serve and be of full force and value, as of right shall appertain.

And thereupon the said master doth protest; and I, the said notary, at his special *interest* and request, do by these presents publicly and solemnly protest against winds, weather, and disaster by being run into by steamboat Bulletin, (Church, master,) and against all and every accident, matter, and thing, had and met with as aforesaid, whereby or by means whereof the said steamer, or her cargo, already has, or hereafter shall appear to have, suffered or sustained damage or injury, for all losses, costs, charges, expenses, damages, and injury, which the said steamer, the owner or owners, freighters or shippers of her said cargo, or any other person or persons interested or concerned in either, already have, or may hereafter pay, sustain, incur, or put unto by or on account of the premises, or for which the insurer or insurers of the said steamer or her cargo is or are respectively liable to pay, or make contribution, or average, according to custom, or their respective contracts or obligations; and that no part of such losses and expenses already incurred, or hereafter to be incurred, do fall on him, the said Wm. W. Tunstall, his officers or crew.

Thus done and protested, at my office in the city of New Orleans, this thirty-first day of March, in the year of our Lord one thousand eight hundred and forty-six, in the presence of James Gardiner and William Shannon, both of this city, competent witnesses, who hereunto sign their names, together with the said appearers, and me, said notary.

Original signed, Wm. W. Tunstall, captain; T. C. Fulcher, clerk; A. G. Butler, mate; Thomas L. Bailey, pilot; Gideon Witham, engineer; Henry Klanke, pilot; James (his × mark) Neal, watchman; William Butler, C. Johnson, William Shannon, Jas. Gardiner.

G. R. STINGER, *Not. Pub.*

I hereby certify the above to be a true copy of the original protest extant in my current register.

In faith whereof I grant these presents, under my signature [SEAL.] and seal of office, at New Orleans, this seventeenth day of December, 1846.

(Signed) G. R. STINGER, *Not. Pub.*

And further, on the 22d day of April, 1847, the following entry was made on the minutes, to wit:

THURSDAY, *April 22d, A. D.* 1847.

The court met pursuant to adjournment. Present the honorable Theo. H. McCaleb.

W. W. TUNSTALL vs. STEAMBOAT BULLETIN. } 6284.

This case being called for trial, Hunton and Lacy, esqs., proctors for libellants, and W. C. Micon, esq., proctor for respondents, appeared. Evidence in writing was submitted to the court, and argument of counsel heard. The further trial of the case was continued until to-morrow, at 10 o'clock, A. M.

And on the 23d day of April, 1847, the following entry was made on the minutes, to wit:

FRIDAY, *April 23d, A. D.* 1847.

The court met pursuant to adjournment. Present, honorable Theo. H. McCaleb.

W. W. TUNSTALL
vs.
STEAMBOAT BULLETIN. } 6284.

This cause, as continued from yesterday, was this day called; when the court, after hearing further argument of counsel, took the same under consideration.

And on the 3d day of July, 1847, the following judgment was entered on the minutes, to wit:

SATURDAY, *July 3d, A. D.* 1847.

The court met pursuant to adjournment. Present honorable Theo. H. McCaleb.

W. W. TUNSTALL
vs.
The STEAMBOAT BULLETIN and Charles B. Church. } 6284

The court having taken this cause under consideration, gave its judgment this day, in the words and figures following, to wit:

The court having duly considered the law and evidence in this case, and being satisfied that the collision between the steamboats Wabash Valley and Bulletin was caused by the negligence or want of skill of the pilots of both of the said boats, but principally by the negligence or want of skill of the pilot of the Bulletin, doth now order, adjudge, and decree that the damage sustained by the libellant, in consequence of the sinking of the Wabash Valley by the Bulletin, to wit, the sum of $6,000, be borne equally by the owners of the respective boats; and it is further ordered, adjudged, and decreed, that the costs of this action be paid by the respondents. The owners of the Bulletin will therefore pay to the libellant the sum of three thousand dollars and the costs of suit.

And on the 14th day of July, 1847, the following petition of appeal was filed in the clerk's office, to wit:

W. W. TUNSTALL and others
vs.
STEAMBOAT BULLETIN and owners. }

U. S. D. C. for Louisiana, C. B. Church, claimant and defendant.

And now comes the said defendant, and prays an appeal from the judgment rendered in the said suit, and tenders his bond, with security according to law, and prays that citation be made to said plaintiffs, and that all further proceedings be had required by law.

(Signed) BENJAMIN & MICON, *Proctors.*

Judge's order on the foregoing petition of appeal.

Let an appeal be granted as prayed for, on the appellants giving bond in the sum of six thousand dollars, conditioned according to the rules in admiralty.

(Signed) THEO. H. McCALEB,
U. S. Judge.

And further, on the 14th day of July, 1847, the following bond was filed in the clerk's office, to wit:

Know all men by these presents, that we, Charles B. Church as principal, and Fellows, Johnson & Co. as sureties, are held and firmly bound unto W. W. Tunstall and others, owners of the Wabash Valley, in the full and just sum of six thousand dollars, to be paid to the said W. W. Tunstall and others, owners, their certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals, and dated this 14th day of July, in the year of our Lord one thousand eight hundred and forty-seven.

Whereas lately in the district court of the United States, sitting in admiralty in and for the district of Louisiana, in a suit depending in said court, wherein said W. W. Tunstall and others are plaintiffs, and said C. B. Church, owner of the Bulletin, was defendant and claimant, judgment was rendered against the said claimant and defendant, and the said C. B. Church having prayed an appeal from said judgment to the circuit court of the United States for the district of Louisiana:

Now, the condition of the above obligation is such, that if the said C. B. Church shall prosecute his appeal to effect, and answer all damages and costs if he fail to make his appeal good, then the above obligation to be void, else to remain in full force and virtue.

(Signed) C. B. CHURCH, [SEAL.]
FELLOWS, JOHNSON & CO.
By JNO. N. JOHNSON. [SEAL.]

Sealed and delivered in presence of—
(Signed) W. BELL.

Citation of appeal.

United States district court for the district of Louisiana, to W. W. Tunstall, greeting:

You are hereby cited and admonished to be and appear at a circuit court of the United States for the fifth circuit and district of Louisiana, to be holden at New Orleans on the third Monday of December next, pursuant to an order of appeal granted by the district judge of the United States for the district of Louisiana, in a certain suit in admiralty wherein you are libellant, and the Steamboat Bulletin, her tackle, apparel, and furniture, is libelled; to show cause, if any there be, why the decree rendered on the third day of July, A. D. 1847, against the said appel-

lant, and in your favor, should not be corrected, and why speedy justice should not be done to the party in this behalf.

Witness my hand and seal, this sixteenth day of October, A. D. 1847, and the 72d year of the American independence.

THEO. H. McCALEB, [L. S.]
U. S. Judge.

Marshal's return.

Received October 16th, 1847, and on the 30th day of October served a copy of the within citation of appeal on Thomas J. Lacy, esq., by leaving it with J. Livingston, esq., who said he was authorized to accept service. Returned, New Orleans, November 9th, 1847.

JOS. PRADOS,
Dy. U. S. Marshal.

Certificates.

CLERK'S OFFICE, *United States district court, for the district of Louisiana:*

I, Needler R. Jennings, clerk of the court aforesaid, do hereby certify, that the foregoing seventy-eight pages and twelve lines form a true and correct transcript of the process, pleadings, documents, evidence adduced on trial, and other matters on file and of record in the suit in admiralty of Wm. W. Tunstall vs. the Steamboat Bulletin and Charles B. Church, her master and owner, and numbered 6,284 on the docket of said court.

In testimony whereof I have hereunto signed my name, and affixed the seal of the said court, at New Orleans, this 17th day of [SEAL.] December, A. D. 1847, and the 72d year of the independence of America.

N. R. JENNINGS, *Clerk.*

I, Theodore Howard McCaleb, judge of the United States district court for the district of Louisiana, do hereby certify, that Needler R. Jennings, who signed the foregoing certificate, was at the time of so signing his name, and is now, the clerk of the district court of the United States for the district of Louisiana; that faith and credit are due, and ought to be given, to his attestations as such; and that the above certificate is in due form of law.

As witness my hand and seal, at New Orleans, this 17th day of December, A. D. 1847, and the 72d year of the independence of America.

THEO. H. McCALEB. [SEAL.]

And afterwards, to wit, the 6th of January, 1848, the following entry was made of record:

STEAMBOAT BULLETIN vs. W. W. TUNSTALL. } 1653.

This cause having been called for trial this day, appeared the respective parties, by their counsel; W. C. Micon, esq., for appellant, and

Hunton & Lacy, esquires, for appellees; said case was taken up and tried before his honor John McKinley, presiding judge of this court, on the transcript of the record from the district court of the United States for the district of Louisiana; when, after some progress therein, it was considered by the court that the further trial of this case be, and the same is hereby, continued until to-morrow at 10 o'clock, A. M.

And on the same day the following testimony was offered in evidence by the defendant.

STEAMBOAT WABASH VALLEY
vs.
STEAMBOAT BULLETIN.

Testimony taken by consent of counsel.

Andrew J. Bell being interrogated doth depose and say: Says that he is acquainted with Louis Drouillard, the pilot of the steamboat Bulletin. Became acquainted with the said pilot, he thinks, in 1842; but is positively certain that he was acquainted with him in 1843. Was piloting with witness on board of the Harry of the West, in 1843, from this place to St. Louis. It is the belief of the witness that Louis Drouillard is as good a pilot as there is on the Mississippi river. Witness does not recollect the said young man to have been lost, or out of his reckoning, while with him. Witness was also with the said Drouillard on board of the steamboat Die Vernon in October, 1846. The said Drouillard still exhibited the same proofs of his excellence as a pilot. Witness says that, to *be* best of his recollection, he has been a pilot for thirteen years.

Witness being cross examined says, that he has made one trip with Drouillard.

A. J. BELL.

Sworn and subscribed before me, 22d December, 1847.

M. M. COHEN, *U. S. C.*

Capt. Dean being examined says: That he is acquainted with Louis Drouillard; says that he was with him in the fall of 1846. He made two trips with him to St. Louis. Considers the said Drouillard as a very safe, careful, and experienced pilot. That these trips were made during low water; and not the slightest accident happened during that time. Witness says that as a pilot he would employ him as soon as he would any pilot in the St. Louis trade. Says that he, witness, has been on the river about seven years; during three or four years of which he was in the capacity of captain, and on several boats.

Captain Dean, being cross examined, says: His acquaintance with the said Drouillard commenced with him at the time he came on board; *to* met with him as a pilot. Witness says that the said pilot has made two trips only with him on his boat. Witness says that he never knew him as a pilot on any other boats. Witness says that he supposed the young man to be about twenty-one years of age at the time in question.

CHARLES DEANE.

Sworn to and subscribed before me, this 22d day of December, A. D. 1847.

M. M. COHEN, *U. S. C'r.*

Testimony taken by consent.

HORACE GAITHER.
MICON, *for defendant.*

Testimony by consent.

W. W. TUNSTALL
vs.
STEAMBOAT BULLETIN
and owners.

Burdett Paris, witness for claimants and respondents, sworn, says: That his profession is that of a pilot on the river Mississippi, and has been a pilot for about fifteen years, and running to New Orleans about twelve years. Witness knows Louis Drouillard, pilot of the Bulletin, and has known him for some five years. Witness was never on the same boat with him as pilot; he has been pilot on board the Joan of Arc, the Bulletin, and the Eclipse, and believes on other boats—the Boreas was one; he made only one trip on the Eclipse; his reputation as a pilot is very good; he has always been spoken of as a very good man in his profession; he has had that standing as a pilot for about four years; he is a very intelligent young man—very steady and active; he is very steady, and attends very closely to his business. Witness speaks of him principally from reputation; but has heard both pilots and captains who have been with him speak well of him, and give him a very good name as a steady, industrious young man and a good pilot. Witness has been well acquainted with Drouillard, running in the same trade with him from New Orleans to Memphis, in the winter, and very often meeting him in both these ports and in St. Louis.

Cross examination.

Witness has heard Mr. Scott, Mr. Pettit, Mr. Baltzell, and Mr. Wooldridge, all pilots, and others, speak of him. Mr. Wooldridge was with him when he first begun standing watch on the Joan d'Arc, and told witness that Drouillard was then learning very fast; stood watch better than he expected he would, and knew the river very well.

Re-examined.

This was before the Bulletin came out.

BURDETT PARIS.

Sworn to and subscribed before me, this 9th day of December, A. D. 1847.

M. M. COHEN, *U. S. C'r.*

Taken by consent.

MICON, *for claimants.*
HUNTON, *for libellants.*

Testimony by consent.

W. W. TUNSTALL et al.
vs.
STEAMBOAT BULLETIN
and owners.

J. M. Pettit, witness for defendants and claimants, sworn, says: That his profession is that of pilot on the river Mississippi; he has been in that occupation for five years. Deponent is acquainted with Louis Drouillard, pilot of the Bulletin, and has known him since the year 1840. Witness was with Drouillard on the Bulletin, last winter and summer, for some six months. Witness considers him now a good pilot, and that he was so at the time of the accident to the Wabash Valley. Drouillard has been a pilot on the Bulletin ever since she came out. He was on the Joan of Arc, before the Bulletin was built, as pilot; he ranks as one of the best pilots on the river; he had been on the river, standing watch as pilot, some two years before the accident to the Wabash Valley; but before that time deponent had not heard him particularly spoken of, but never heard any complaints of him; he is an active, stout young man, and intelligent.

J. M. PETTIT.

Sworn to and subscribed before me, this 9th day of December, A. D. 1847.

M. M. COHEN, *U. S. C'r.*

Taken by consent.

MICON, *for defendants.*
HUNTON, *for libellants.*

W. W. TUNSTALL et al.
vs.
OWNERS OF STEAMBOAT BULLETIN.

Robert Smith, being examined, says: Witness has been a pilot on the Mississippi river for eight or ten years; says that he knows Louis Drouillard; has known him about six years. The first time witness knew him to stand watch as pilot was in 1843. Witness had known him before, learning the river on different boats. When he first became acquainted with him, which was in 1840 and '41, he was on the Perry and the Maid of Orleans. In 1843, witness hired the said Drouillard to stand watch with him on the steamer Joan of Arc. Witness considers him, as far as he is capable of judging, a very good pilot. Witness was with him on the Arc from New Orleans to St. Louis; the Arc then laid up. From 1843 to the present time Drouillard has always been considered, among the pilots of the river, as a very good pilot. If witness was employed as a pilot on board of one of the first class boats on the river, he would as soon employ Drouillard as a partner as any person he knows. Witness says that he was also with Drouillard on the Joan of Arc in 1844; and witness was also with him

two trips, in 1846, on the steamer Bulletin. In all of those trips, Drouillard and witness acted together as pilots.

ROBERT SMITH.

Sworn to and subscribed before me, this 4th January, A. D. 1848.

J. Q. A. HOIT,
U. S. comm'r, dist. of La.

Taken by consent.

HORACE GAITHER.

Testimony taken by consent of counsel.

Captain Isaiah Sellers, being duly sworn, doth depose and say: Captain Sellers says that he is a pilot, and has been employed in that capacity some eighteen or nineteen years; has piloted, during the whole of this term, on the Mississippi river; says that he is acquainted with Louis Drouillard; has known him some three or four years; has served as pilot with witness one trip; served with him on the steamer J. M. White. This trip took place in March, 1846. He acted, on that trip, as a partner with witness, and discharged the duties of a pilot. The J. M. White is an average size boat, and stands as No. 1 on the river. Captain Swann was at that time in command of the J. M. White. Witness being asked his opinion as to the capacity of the said Drouillard on the Mississippi river as a pilot, said, that if he wanted a good pilot, he would go and hire him. Witness deems him competent to take charge of such a boat as the Bulletin as a pilot; as to his character, witness says that he is steady, sober, and laborious; as to his intelligence, he is quick, as much as any young man witness has ever seen on the river; performed his duties in a manner perfectly satisfactory while with witness; and he further says that he would be content to take him as his partner on a boat—A No. 1—on the river. Witness was an old pilot, and Drouillard a young one. Witness says that Drouillard is still on the Bulletin; at least he has been so informed by Drouillard.

Capt. Sellers, being cross examined, says:

That the said Drouillard has been a pilot some three or four years; says that he had been acquainted with him about two years before employing him as partner on the J. M. White. Witness says that he has made but one trip with Drouillard; this trip commenced at Cairo; went to New Orleans, and ended at Island Sixty-five, some forty miles below Helena, Arkansas; at that time the river was in a pretty navigable stage. Witness says that he had no means of knowing his qualifications as a pilot, except what he had learned from hearsay, and the experiment he made of him while on board the J. M. White; knows that he had served several trips on other boats, and otherwise he would not have taken him on the White as he did. Witness says that his partner had gone to St. Louis from Cairo; the said Drouillard remained with him till his return. Witness says that he exchanged pilots till they met again, the one going down the other coming up. Witness says that, at the time of this trip, Drouillard was a young man; when he first knew him, Drouillard was

learning his trade as a pilot. Witness says that he thinks Drouillard was about twenty at that time.

Re-examined.

Witness believes that Capt. Swan would not have taken Drouillard as a pilot unless he had known something of his standing as a pilot previously; that Capt. Swan was himself a very good pilot, and would himself have stood watch, unless he had got a man with whom he was perfectly satisfied. (This last was objected to by the counsel for plaintiffs.)

J. SELLERS.

Sworn to [and] subscribed before me, this 4th January, 1848.

J. Q. A. HOIT,
U. S. Commissioner, District of Louisiana.

Taken by consent.

HORACE GAITHER.

J. O. Pierson, sworn, says, that he was a passenger on the steamboat Wabash Valley, during part of the voyage, when she was sunk; he got on board at Rodney, and left at Natchez. The Wabash Valley was considered an old boat. It depends upon the manner in which a boat is built whether, after a few years service, she is considered an old boat. He had a sufficient knowledge of the boat to form a general opinion of her value when she was lost, having himself bought and sold several steamboats; he was engaged in steamboat business from 1834 to 1844, principally as owner. His opinion is, that the Wabash Valley was worth when she was lost about $3,500. Witness did notice the management of the Wabash Valley on this trip, as he is in the habit of doing when he travels on steamboats. He was struck with the want of good order on board the boat, with reference to the officers and the management of the boat generally. His reason for saying so, he saw three different persons on board the boat give orders about her running, two of whom were called captain; some incidental order; what it was he does not recollect *what it was;* one of the persons was called Capt. Tunstall, but witness did not know any person on board the boat. Witness does not recollect any thing else in reference to the management of the boat; he noticed that she was heavily laden; there *was* three or four tiers of cotton on board the boat, he believes; the cotton could not have sunk her as low as she appeared to be. Witness recollects asking some person, whom he took for the clerk, why the boat was so deep; and he recapitulated the cargo she had in her hold. Witness thinks the boat was deeper than insurance inspectors would have sanctioned had they seen her before leaving port. Witness was on board of her about five hours; he left her at Natchez. Witness got on board about 3 o'clock, and landed before bed time. Witness left Natchez next day, and in descending the river saw a portion of the wreck of the Wabash Valley, which had been sunk in the mean time.

Cross examined.

Witness resides in the city of New Orleans, and does not positively know the age of the Wabash Valley. He does not recollect being in the engine room of the boat while on board. He is now an auction and commission merchant in New Orleans. Witness has occasionally charge of steamboats for several trips, but his knowledge arises from owning them, buying and selling.

January 6, 1848.

Captain Robertson for the defence:

Has been U. S. inspector of steamboats since 1845, up to the present time; that he has also been an inspector of steamboats for insurance offices since 1830. He has a memorandum of having inspected a small steamboat of ninety-one tons, called the Wabash Valley, and built [in] 1844, at Freedom, Pennsylvania; he has not the date of this inspection. That the boat referred to by witness was always considered a very light built and indifferent boat. Being uncertain whether this was the boat now in question, he has referred to his memorandum to see how she was classed, and what notice was taken of her. He finds but one boat of the name "Wabash Valley" on his list. Witness knows nothing about the condition of the boat at the time the collision took place; he is under [the] impression that he had not seen her for a long time. The Wabash Valley was always considered by the insurance companies a second class boat, and always rejected for the lower trade. The insurance companies would not, from her first coming out, have insured her for the lower trade. That is what he means by saying she had been always rejected for the lower trade. On the return of the Bulletin to New Orleans, soon after the sinking of the Wabash Valley, witness, at the request of Captain Church, and in company with Captain Swain, an inspector, and of several steamboat captains, examined the Bulletin, and gave a certificate of the condition of the boat at that time. He kept no copy of that certificate. This examination, that is, the result of it, had escaped deponent's memory until a few days ago, when he went on board the Bulletin with Captain Church, when the circumstances all came fresh to his memory, and he now recollects them distinctly. The Bulletin bore no mark of a collision, not even having the paint scratched off, for more than a hundred feet from the stern of the boat aft. Witness examined particularly, and saw no mark whatever. Between the hundred feet here described, and the cabin stairs, the rail or chock was broke, and three or four of the cabin stairs were knocked out of place; the lower part of the staunchеon, at the foot of the stairs, knocked in, and the siding of the stairs slightly damaged. Where the rail was broken, or near where the rail was broken, there was a scar on the nosing, as though made by a steamboat, sternhand striking head on. Deponent does not recollect that he examined the wheel-house or the wheel. Such boats as the Wabash Valley usually wear out in three years; he means the hull, not the engines; after three years the hulls

need great repairs to be fit for service. Witness thinks that such a boat, after eighteen months service, would be reduced in value at least one-half, unless she had been very extensively repaired.

Cross examined.

Witness does not know what the original cost of the Wabash Valley was. He supposes she might have been seven or eight thousand dollars. Says it would be jumping at conclusions to give any opinion as to her original value. In examining the steamboat Bulletin, he does not remember whether she was loaded or not, but he is certain that he did not examine her bottom. Witness saw no evidence of any repairs having been made on the Bulletin's hull or bottom, during the interval between the collision with the Wabash Valley and deponent's examination above mentioned. If there had been such repairs, thinks he would have seen them.

This testimony taken in open court upon the trial of the case on appeal. 6th January, 1848.

ED. RANDOLPH, *Clerk.*

Agreement of counsel.

The undersigned have been for many years familiar with the Mississippi river, and state the fact that the tide ebbs and flows for more than one hundred miles above the city of New Orleans.

January 5th, 1848. H. PEASE,
THEODORE W. DUNNICA.

We agree that the foregoing statement may be read as evidence in the case of W. Tunstall vs. the Bulletin.

LACY AND HUNTON,
For Libellants.
BENJAMIN AND MICON,
For Steamboat Bulletin and owners.

And afterwards, to wit, on the 7th of January, 1848, the following entry was made of record:

STEAMBOAT BULLETIN
vs. } 1653.
W. W. TUNSTALL.

The trial of this cause being resumed this day, when the evidence and argument of counsel having closed, the cause was submitted; whereupon the court took the same under advisement.

And afterwards, to wit, on the 14th day [of] January, 1848, was rendered the following judgment:

STEAMBOAT BULLETIN
vs. } 1653.
W. W. TUNSTALL.

This cause having been argued and submitted to his honor, John McKinley, presiding judge of this court, at a former day hereof, upon

the transcript of records from the United States district court, for the district of Louisiana; after due consideration, the court is of opinion that the appellant is responsible for the whole of the damages occasioned by the collision, and that the judgment of the district court herein should be modified accordingly.

It is therefore ordered, adjudged, and decreed, that the appellee, W. W. Tunstall, recover of the claimant, Charles B. Church, the sum of six thousand dollars and costs of suit.

And afterwards, to wit, on the 2d day of February, 1848, the following final decree was rendered:

STEAMBOAT BULLETIN vs. W. W. TUNSTALL. } 1653.

His honor, John McKinley, presiding judge of this court, having reconsidered this case:

It is ordered, adjudged, and decreed, that the decree heretofore rendered herein be set aside, and that the decree of the district court be affirmed with costs.

Decree rendered 2d February, 1848.

Signed 9th February, 1848. J. McKINLEY.

And afterwards, to wit, on the 25th day of February, 1848, the following petition of appeal was filed:

W. W. TUNSTALL vs. STEAMBOAT BULLETIN and owners. }

The petition of C. B. Church, respondent and claimant in [the] above stated cause, respectfully shews, that he is advised and believes that there is error in the judgment of this court, affirming the decree of the district court in the above stated case, and respondent here presents a bond, with John N. Johnson, security, in the sum of six thousand dollars.

And petitioner prays that said bond be accepted, and that an appeal be allowed to the Supreme Court of the United States from the said judgment, in due form of law.

WILLIAM C. MICON, *Attorney.*

And on the same day the following bond was filed:

Know all men by these presents, that we, Charles B. Church, as principal, and John N. Johnson, as sureties, are held and firmly bound, unto W. W. Tunstall, in the full and just sum of six thousand dollars, to be paid to the said W. W. Tunstall, his certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals, and dated this day of February, in the year of our Lord one thousand eight hundred and forty-eight.

Whereas lately, at a circuit court of the United States, ninth judicial circuit, holding sessions in and for the district of Louisiana, in a suit depending in said circuit court, wherein said W. W. Tunstall is libellant and appellee, and said Church is respondent and claimant of steamboat Bulletin, appellant, judgment was rendered against the said C. B. Church, defendant and appellant, affirming the judgment of the district court; and the said C. B. Church, having prayed an appeal from said judgment in the aforesaid suit, and a citation directed to the said W. W. Tunstall having issued, citing and admonishing him to be and appear at a Supreme Court of the United States to be holden at Washington, the Monday of next.

Now, the condition of the above obligation is such, that if the said appellant shall prosecute his appeal with effect, and shall satisfy such judgment as shall be rendered against him in said Supreme Court, and answer all damages and costs, if he fail to make his said appeal and plea good, then the above obligation to be void; else to remain in full force and virtue. CHS. B. CHURCH. [SEAL.]
JOHN N. JOHNSON. [SEAL.]

Sealed and delivered in the presence of—

And on the same day the following entry was made of record, to wit:

W. W. TUNSTALL
vs.
STEAMBOAT BULLETIN and owners. } 1653.

On motion of W. C. Micon, of counsel for the claimant and respondent C. B. Church, and on presenting the petition of appeal and bond of said respondent, with John N. Johnson, security, in the sum of six thousand dollars heretofore filed, and on further presenting the written acknowledgment of the counsel for said libellant of the sufficiency of said security, it is ordered that an appeal be allowed to the Supreme Court of the United States from the judgment of this court, returnable on the first Monday of December next, and that said appeal operate a supersedeas or stay of execution according to law.

And on the same day the following agreement and acceptance of security was filed.

We deem the security of J. N. Johnson, of the firm of Fellows, Johnson & Co., sufficient in the case of Owners of the S. B. Wabash Valley vs. Owners of the S. B. Bulletin.

LACY & HUNTON,
Of Counsel.

Clerk's office, United States circuit court, fifth circuit and district of Louisiana.

I, Edmund Randolph, clerk of the circuit court of the United States, in and for the fifth circuit and district of Louisiana, do hereby certify, that the foregoing sixty-eight pages and sixteen lines contain a full,

faithful, true, and complete transcript of the record and proceedings, [and] all the evidence adduced on the trial of the case of Steamboat Bulletin vs. W. W. Tunstall, Number 1653, so far as the same now remain on file in the said court.

In testimony whereof I have hereunto signed my name, and affixed the seal of the said court, at the city of New Orleans, this first day of May, A. D. one thousand eight hundred and forty-eight, and the seventy-second year of the independence of the United States.

[SEAL.]

ED. RANDOLPH, *Cl'k.*

I, Theodore H. McCaleb, judge of the district court of the United States for the district of Louisiana, and one of the judges of the circuit court of the United States for the fifth circuit and district of Louisiana, do hereby certify, that Edmund Randolph, who signed the foregoing certificate, is the clerk of the circuit court of the United States for the fifth circuit and district of Louisiana, and was at the time of so doing, and that due faith and credit are due and ought to be given to his acts as such, and that the foregoing certificate is in due form of law.

Witness my hand and seal this first day of May, A. D. 1848.

THEO. H. McCALEB. [SEAL.]

Filed 25th November, 1848.